

REMARKS

This Amendment is in response to the Final Office Action of November 24, 2008.

The Examiner has requested a new title of the invention that is clearly indicative of the invention to which the claims are directed. Applicant has amended the Title.

The Examiner has objected to Claim 1 due to informalities, therefore Applicant has amended claim 1.

The Examiner has rejected claims 1, 7, 13-16 and 21-22 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Applicant has amended the claims.

The Examiner has rejected claims 1, 7, 13-16 and 21-22 under 35 U.S.C. 103(a) as being unpatentable over Kressin (US 6,535,238 B1), in view of Morozov et al, (US 2004/0161034 A1), and further in view of Banerjee et al. (US 7,363,369 B2).

Applicant respectfully disagrees with the Examiner's interpretation of the references and the basis of the prior art rejections. However, in the interests of advancing prosecution and without conceding as to the substance of the rejection Applicant has amended the independent claims.

Applicant has amended the claims to clarify that the video quality of individual frames is affected by the software encoding level and that the performance level is selected to maintain an idle thread utilization above a minimum threshold to permit another program to load and execute. New dependent claims were added recited various limitation on the encoding levels. Support for these amendments is found in paragraphs [0032], [0038], [0041], [0042], [0046], [0061], and [0065].

The claimed invention is directed to the problem of having a video encoder "gracefully" coexisting with other software. As described in Applicant's specification, a video encoder may consume too large a percentage of the processing power of a processor to permit another software application to load and execute properly. In the claimed invention, the adjustable software program is a video encoder that has at least two different performance levels where each performance level corresponds to an encoding level. A change in the encoding level results in a corresponding change in CPU usage and also affects video encoder quality of individual

frames. The performance level of the video encoder is then adjusted, if necessary, to permit another program to load and execute properly.

It is respectfully requested that the 35 USC 103 rejections be withdrawn. The cited prior art, when fairly interpreted, does not disclose all of the limitations of the claimed invention and one of ordinary skill in the art would not make the combination. The Examiner has stated that Kressin discloses varying a frame rate. However, Applicant notes that a frame rate is not related to video encoding levels of individual frames as that term is defined in Applicant's specification. That is, Kressin deals with processor utilization by varying the frame rate, not attributes affecting individual frame quality. Morozov deals with the problem of using a perceptual model based on a smooth bit utilization for perceptual integrity in light of past bit and future bit utilization. See Morozov, paragraphs [0026] and [0046]. In particular, Morozov teaches that the bit rate is selected for "maintaining visual quality." See, e.g., Morozov paragraph [0046]. That is, one of ordinary skill in the art would understand that Morozov is attempting to maintain essentially constant frame quality over a sequence of frames using a perceptual model. Banerjee deals with the fundamentally different problem in networking technology of controlling external client requests made to a server from a network. It is respectfully submitted that the combination of references would not provide one in the art with a sufficient teaching and suggestion to modify a video encoding level affecting video quality of individual frames in order to preserve idle thread utilization at a level selected to facilitate another program executing and loading properly.

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is now in condition for allowance. The Examiner is invited to contact the undersigned if there are any residual issues that can be resolved through a telephone call.

The Commissioner is hereby authorized to charge any appropriate fees to Deposit Account No. 50-1283.

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EVG:dlh

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